

**For:** State and County Offices

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**Environmental Risk Management in Real Estate Transactions**

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**Approved by:** Deputy Administrator, Farm Programs



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**1 Overview**

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**A**

**Background**

FSA is responsible for ensuring that its farm loan programs comply with Federal, State, and local laws concerning managing and disposing of hazardous substances, hazardous waste, and petroleum products.

Because of legislation enacted by Congress in 1996, along with regulations published by EPA, FSA has revised its policy concerning corrective actions for hazardous substances, hazardous waste, and petroleum products located on its inventory property. For the purpose of this notice, the term “petroleum products” includes underground storage tanks (UST). Also, this notice establishes policy concerning these issues in relationship to loan making activities.

The legislation that amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq. is Pub. L. 104-208, Subtitle E, the Omnibus Consolidated Appropriations Act of 1997. Subtitle E may be cited as the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (the 1996 Act).

The 1996 Act, Section 2502 made several amendments to CERCLA, Section 101(20). The most significant change effected by the 1996 Act was revising the definition of “owner-operator” to exclude lenders that did not participate in managing a facility before foreclosure and seek to sell, lease, or otherwise dispose of the facility at the earliest practicable, commercially reasonable time on commercially-reasonable terms, taking into account market conditions and legal and regulatory requirements.

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**Disposal Date**

January 1, 2001

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**Distribution**

State Offices; State Offices relay to County  
Offices

## 1 Overview (Continued)

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### A

#### Background (Continued)

The 1996 Act, Section 2503 amended the Solid Waste Disposal Act, Section 9003(h) by adding the following:

The terms “owner” and “operator” do not include a person that, without participating in the management of UST and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person’s security interest.

On September 7, 1995, EPA published a final rule, Underground Storage Tanks-Lender Liability, at 60 FR 46692 (Resource Conservation and Recovery Act (RCRA), Subtitle I-Regulation of UST's). This rule, 40 CFR Parts 280 and 281, specifies conditions limiting the regulatory obligations of persons who hold a security interest in UST or in real estate containing UST, or that acquires title or deed to UST or property on which UST is located and adopts changes made to the definition of the terms “owner” and “operator” made by the 1996 Act.

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### B

#### Purpose

This notice establishes and incorporates into FSA lending and land management practices for inventory properties an Environmental Risk Management Policy. A major component of this risk management policy will be the performance of due diligence to both of the following:

- minimize adverse impacts to FSA’s security interests in real property caused by potential contamination from hazardous substances, hazardous waste, and petroleum products
  - establish a process by which FSA can minimize its liabilities under the law regulating management of hazardous substances, hazardous waste, and petroleum products.
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## 1 Overview (Continued)

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### B

#### **Purpose (Continued)**

This notice contains the Agency's policies and procedures for managing hazardous substances, hazardous waste, and petroleum products and implements requirements of the following environmental laws:

- CERCLA, 42 U.S.C. 9601 et seq.
- RCRA, 42 U.S.C. 6991 et seq.
- Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq.

This notice provides guidance to conduct due diligence to reduce future losses from a reduction in market value and to ensure compliance with Federal, State, and local laws about the management of hazardous substances, hazardous waste, and petroleum products. It also provides guidance concerning response or corrective actions when hazardous substances, hazardous waste, or petroleum products are present according to the changes to CERCLA and RCRA.

Even though this notice provides some exceptions to undertaking corrective actions on properties the Agency disposes of, CERCLA, Section 120(h) may be triggered if FSA does not act within the boundaries of the secured creditor exemption.

### C

#### **Definitions**

Abatement is any measure designed to permanently eliminate lead-based paint hazards according to standards established by the Administrator, EPA under Title IV of TSCA. (24 CFR Part 35) Abatement strategies include:

- removing lead-based paint
- encapsulating lead-based paint with a product that has been shown to meet standards established or recognized under Title IV of TSCA
- replacing building components coated by lead-based paint
- removing lead-contaminated dust
- removing or covering lead-contaminated soil.

Ancillary equipment are any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from UST. (40 CFR 280.12)

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Continued on the next page

## 1 Overview (Continued)

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### C

#### Definitions (Continued)

Appropriate environmental regulatory authority refers to, unless otherwise stated, the Federal, State, or local regulatory agency granted oversight authority for management of 1 or more hazardous substances, hazardous waste, or petroleum products.

Due diligence is the process of evaluating real estate in the context of a real estate transaction for the presence of contamination from release of hazardous substances, hazardous waste, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the regulatory status or security value of the property.

Emergency response action is an action required immediately to temporarily contain and stabilize a release or threatened release of hazardous substances, hazardous waste, and petroleum products that pose imminent and substantial threats to human health and the environment on property that FSA has a security interest. See generally 42 U.S.C. 9604 and 9606.

Encapsulation is resurfacing or covering surfaces and sealing or caulking the surface with durable materials to prevent or control chalking, flaking, or lead-containing substances from becoming part of house dust or accessible to children. The covering material may be rigid, such as gypsum board or paneling, or it may be liquid that dries into a durable flexible coating. Paint is not an acceptable encapsulate. (24 CFR Part 35)

Environmental professional is a non-FSA individual who possesses the technical and scientific credentials necessary to conduct due diligence evaluations, and from the information gathered by such evaluations, has the ability to develop conclusions concerning potential environmental contamination. In addition, an environmental professional will be able to provide technical oversight, direction, and management of response actions pursuant to CERCLA and RCRA.

Facility is a building, structure, installation, equipment, pipe or pipeline, storage container, motor vehicle, rolling stock or aircraft; or any site or area where a hazardous substance has been deposited, stored, disposed of, or otherwise comes to be located. (42 U.S.C. § 9601)

Hazardous substance is a hazardous substance identified by 42 U.S.C. 9601 as:

- any substance designated under the Clean Water Act (CWA), Section 311(b)(2)(A)

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## 1 Overview (Continued)

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### C

#### Definitions (Continued)

- any element, compound, mixture, solution, or substance designated according to CERCLA, Section 102
- any hazardous waste having characteristics listed under RCRA, Section 3001
- any toxic pollutant listed under CWA, Section 307(a)
- any hazardous air pollutant listed under the Clean Air Act, Section 112
- any imminently hazardous chemical substances or mixture with respect to which the Administrator, EPA, has taken action according to TSCA, Section 7.

Hazardous waste is a solid waste or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Refer to 40 CFR 261.3 for the regulatory definition of a hazardous waste and 40 CFR 261.4 for waste material excluded from the definition of hazardous waste.

Indicia of ownership is evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property security for a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to mortgages, deeds of trust, liens, surety bonds and guarantees for obligations, and legal or equitable title obtained according to foreclosure or voluntary conveyance. (40 CFR 280.200)

Participate in management is a term used to describe a lender who did not participate in management unless, while the borrower was still in possession of the property, the lender exercised decision making control over the environmental compliance concerning the facility or exercised control at a level comparable to that of a manager of the facility such as undertaking responsibility for hazardous substance handling or disposal practices. (40 CFR 280.210)

Petroleum products (and their derivatives) are uncontaminated petroleum products which are not, by definition, a hazardous substance. Petroleum products include crude oil or any fraction thereof which is not specifically listed under the definition of “hazardous substance” found in 42 U.S.C. 9601(14).

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## 1 Overview (Continued)

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### C

#### Definitions (Continued)

Potentially responsible party (PRP) is a term encompassing the following definitions found at 12 U.S.C. 9607.

- Current owner, operator, or owner and operator of a facility from where there is a release or a threatened release of hazardous substances, whether or not they disposed of hazardous substances during their ownership.
- Prior owner, operator, or owner and operator of a facility, if they disposed of hazardous substances during ownership or acquired actual knowledge of a release or threatened release during ownership and later transferred ownership without disclosure of the knowledge to the purchaser.
- Transporters who brought hazardous substances to a facility selected by them.
- Generators and other owners or possessors of hazardous substances, who arranged for disposal or treatment.

Release is the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substances. (40 CFR 280.12)  
This definition excludes:

- releases that result in exposure to persons solely within a workplace
- emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

Response action is all investigative and remedial activities concerning a resolution of an environmental threat or contamination caused by a release or disposal of hazardous substances, hazardous waste, or petroleum products.  
(42 U.S.C. 42 9601)

Underground Storage Tank (UST) is any one or combination of tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto is 10 percent or more beneath the surface of the ground. For the purposes of this notice, regulated tanks are those subject to Federal regulation under RCRA. (40 CFR 280.12)

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Continued on the next page

## 1 Overview (Continued)

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### C

#### Definitions (Continued)

Underground Storage Tank (UST) System is UST, connected underground piping, underground ancillary equipment, and containment equipment, if any. (40 CFR 280.12)

Unregulated UST are tanks not included in the definition of UST found at 40 CFR 280.12 and are not subject to the requirements of RCRA, Subtitle I. These include the following:

- farm and residential tanks of 1,100 gallons or less capacity for storing motor fuel for noncommercial purposes
  - UST's of any size used for storing heating oil for consumptive use on the premises where stored
  - other types of tank systems listed in 40 CFR 280.12, such as septic tanks; pipeline facilities; surface impoundments, pit, pond, or lagoons; storm water or wastewater collection system; flow-through process tanks; liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and storage tanks situated in an underground area (that is, basement, cellar, mineshaft, etc.) if the tank is situated on or above the surface of the floor.
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## 2 Responsibilities

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### A

#### FSA Official Responsibilities

The FSA official is responsible for ensuring compliance with the requirements of this notice and coordinating activities with the State Environmental Coordinator (SEC), as needed.

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### B

#### Applicant Responsibilities

Applicants are responsible for identifying and complying with all laws regulating management of hazardous substances, hazardous waste, and petroleum products that affect their financial operation or business interest. Recipients of FSA program benefits are expected to maintain their operations in an environmentally sound manner and not place security interests at risk.

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## 2 Responsibilities (Continued)

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### C

#### Appraiser Responsibilities

Appraisers are responsible for notifying or reporting to the appropriate FSA official any concerns about potential contamination from hazardous substances, hazardous waste, and petroleum products, which they become aware of, either through disclosure by interested parties or through normal observations or research conducted during an appraisal assignment. When an environmental professional is employed to assist the appraiser in determining the security value of real estate, the appraiser should be in a position to estimate the property's "as is" value if the appropriate supporting documentation is available from an environmental professional.

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### D

#### Environmental Professional Responsibilities

A qualified environmental professional will perform all Phase II Environmental Site Assessments (ESA), all analytical procedures (including sampling and testing activities) concerning any environmental media, response actions, and environmental audits. The environmental professional will be responsible, in the context of due diligence, for evaluating remedial options and providing a cost estimate for response actions on subject property. These cost estimates will be used by appraisers and FSA officials in security value determinations and in making risk analyses in loan processing and servicing decisions.

In addition, the environmental professional is responsible for obtaining and analyzing environmental samples according to proper health and safety procedures required by 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response," and the most current sampling and laboratory protocols promulgated by the appropriate environmental regulatory authority.

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### E

#### SEC Responsibilities

SEC is responsible for the oversight of all technical and regulatory interactions under this section with CEPD in the National Office, other FSA staff, and the appropriate environmental regulatory authorities.

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## 3 Environmental Risk Management for Loan Making and Loan Servicing

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### A

#### Due Diligence

FSA must conduct due diligence on property being offered as security for initial loans, subsequent loans, and property offered as additional security to determine the presence of hazardous substances and to accurately determine market or security values. FSA will conduct due diligence for EM loans when an appraisal is not required. FSA will also conduct due diligence for acquisition of real property.

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### 3 Environmental Risk Management for Loan Making and Loan Servicing (Continued)

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#### A

##### **Due Diligence (Continued)**

Due diligence consists of a 2-step process that includes: (1) Transaction Screen Questionnaires (TSQ) and (2) Phase II ESA's). These forms which are published by the American Society of Testing and Materials (ASTM) are considered by FSA as an adequate format for performing due diligence. TSQ forms are available from SEC for FSA's use. When it is necessary to conduct ESA, the environmental professional will supply the form.

It is not necessary to complete both steps in performing due diligence. It is necessary only to complete the level of review required to ascertain and document environmental and economic risk posed by potential contamination.

If market value is being determined, due diligence should be completed before the appraisal or as part of the appraisal.

The 2-step due diligence process is further explained as follows:

- TSQ and ASTM Standard E-1528-96 (Standard Practice for Environmental Site Assessments Transaction Screen Process) is defined as the initial level of inquiry which evaluates the environmental condition of collateral and concludes whether or not additional evaluation is necessary. Proper completion of TSQ will assist FSA in qualifying for the innocent landowner's defense to CERCLA liability. TSQ is designed as a series of questions that determine present or past land uses or activities which may have or appear to offer the potential for adversely impacting the environmental conditions and market value of collateral or acquired property. If the results of TSQ are inconclusive and professional review and judgment are needed, then the next level of review, Phase II ESA, may be necessary to clarify the issues raised by TSQ. Also, as part of TSQ process, complete Exhibit 1 of this notice to further assess other environmentally related conditions of the property such as water quality and waste issues.
- A Phase II ESA and ASTM Standard E-1528 (Standard Guide for Environmental Site Assessments, Phase II Environmental Site Assessment Process) is a detailed investigation and evaluation of a property's environmental condition and involves a review of all pertinent records, a site reconnaissance of the property, and the preparation of a brief narrative report communicating the findings and conclusions about the environmental condition of the property. Phase II ESA's should be performed if the results of TSQ are inconclusive. In most cases, the environmental professional will be requested to provide cost estimates to remediate the environmental hazard to an acceptable level according to Federal, State, and local laws and regulations.

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### 3 Environmental Risk Management for Loan Making and Loan Servicing (Continued)

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#### B

##### Safety

As a minimum, all SEC's are required to have completed an 8-hour Hazardous Materials First Responder Awareness Level training course or similar course approved by the National Office. All District and County level personnel who may come in contact with hazardous materials or hazardous waste will be provided similar safety training by SEC. A training guide that incorporates safety training with the use of TSQ is available from the National Office.

**Important:** FSA is responsible for the health and safety of all FSA employees conducting on-site visits of real property. FSA, acting through SEC, must ensure that proper training is provided to all appropriate employees.

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#### C

##### Loan Making - Direct Loans CERCLA/ RCRA

The release or presence of a hazardous substance, hazardous waste, or a leaking UST on a property could affect the value of the property which is offered as security for a loan or as additional security. Furthermore, a borrower with substantial CERCLA or RCRA (UST) liability may have a severely diminished ability to repay. Therefore, due diligence will be performed for all new loans involving real estate as security, including real estate offered as additional security. Also, due diligence will be conducted for all real property being offered as security for subsequent loans.

It will not be necessary to perform due diligence on real property where the Agency has a review on file that is less than 1 year old and there is no reason to suspect that any changes in the property's condition have taken place. For real property with a due diligence review on file older than 1 year, it will only be necessary to update the existing review to reflect current information.

If FSA determines that the property being offered as security contains possible hazardous waste contamination based on the completion of TSQ, FSA will notify the applicant that no further processing of their loan application can take place until either of the following:

- applicant provides an environmental assessment completed by a qualified environmental professional that shows the property offered for security is not contaminated
- new noncontaminated property is offered as security for the loan
- contaminated property being offered as security has been fully remediated according to a plan approved by the appropriate regulatory agency

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### 3 Environmental Risk Management for Loan Making and Loan Servicing (Continued)

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#### C

##### **Loan Making - Direct Loans CERCLA/ RCRA (Continued)**

- contaminated property can be subdivided, thus leaving a noncontaminated property to offer as security.

Any contamination found by the Agency should be reported, in writing, to the applicant with instructions that it may have a reporting requirement.

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#### D

##### **Loan Making - Direct Loans UST's**

When it is determined that real property being offered as security for a loan contains UST, FSA will notify the applicant that no further processing of their loan application can take place until the following requirements are met.

If the property being offered as security contains a regulated UST, the applicant will be requested to provide evidence that it is complying with all applicable environmental laws and regulations including, but not limited to, both of the following:

- UST is registered with the appropriate State regulatory agency
- UST is not leaking. Such evidence may consist of tank installation data to show what type of tank was installed and measures employed to prevent leakage. Evidence may also consist of test results from a qualified environmental professional.

If the property being offered as security contains a nonregulated UST, the applicant will be required to either:

- remove or permanently close the tank according to State and local laws and regulations and furnish evidence that no contamination exists
- provide evidence that the tank is not leaking and will not leak during the term of the loan. Such evidence may consist of tank installation data to show what type of tank was installed and measures employed to prevent leakage. Evidence may also consist of test results from a qualified environmental professional.

Any contamination found by the Agency will be reported to the applicant, in writing, with instructions that it may have a reporting requirement.

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### 3 Environmental Risk Management for Loan Making and Loan Servicing (Continued)

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#### E

##### Loan Servicing - Direct Loans

Due diligence will be completed on all properties being considered for foreclosure or voluntary conveyance by first completing TSQ.

To determine the bid amount to take property into inventory or accept as a voluntary conveyance offer, deductions for the potential cleanup of hazardous substances, hazardous waste, or UST's, as determined by a Phase II ESA prepared by an environmental professional will be included in RD Instruction 1955-A, Exhibits G or Exhibit G-1, line 3k.

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### 4 Management and Disposal of Inventory Property

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#### A

##### Hazardous Substances/ Hazardous Waste

To take advantage of the secured creditor exemption, FSA must seek to sell or otherwise divest itself of acquired property (foreclosure or voluntary conveyance) in a reasonably expeditious manner using whatever commercially reasonable means are available or appropriate and according to the statute, after taking all facts and circumstances into account. The determination of whether the secured creditor exemption is available must be based on a review of the facts involved in each case.

Under normal circumstances (that is, where the secured creditor exemption is available), FSA will not conduct cleanups or remediation of hazardous waste contamination on inventory properties before, or as a condition of, a sale except where:

- FSA actively participated in the management of the property before its acquisition
- property has been held in inventory for longer than 12 months and no diligent efforts have been made by FSA to dispose of the property

**Note:** For States with redemption periods after foreclosure, FSA will not consider the 12-month period to begin until clear title is obtained to the property. Also, FSA will take no corrective or remedial action on property which is under lease with an option to purchase. The 12-month period begins for a leased property when it becomes available for sale (lease expires or option was not exercised).

- contamination is of such an extent or nature that it is of immediate concern to the health and safety of neighboring property owners or to the potential purchasers of the property
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#### 4 Management and Disposal of Inventory Property (Continued)

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##### A

##### **Hazardous Substances/ Hazardous Waste (Continued)**

- property is being sold to a beginning farmer or rancher and FSA is providing credit assistance through direct, participation, or guaranteed methods. The sales price of the property will be the “as improved” value as determined by an appraisal.

While the 1996 Act precludes FSA’s liability for corrective action costs if FSA retains its eligibility for the secured creditor exemption, the appropriate State or local environmental regulatory agency may attempt to require FSA to undertake corrective action measures on the inventory property based on its assessment of the risks posed by any contamination identified there. This will usually occur only when State or local law supersedes the requirements of Federal law.

When the secured creditor exemption applies and the property is being sold back to PRP such as the former owner, FSA will not undertake any corrective action.

When no corrective action may be taken on a property as a condition of disposal, FSA will obtain the proper level of documentation according to subparagraph 3 A of this notice. This documentation will be retained in a permanent file for each individual property by SEC in the State Office.

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##### B

##### **Petroleum Products/UST’s**

A site assessment for UST will be required if UST on the inventory property has not been upgraded or replaced to meet the requirements of 40 CFR 280.20 for new UST systems or 40 CFR 280.21 for upgraded systems, or if no external release detection method is in operation.

Aboveground storage tanks (AST's) and heating oil tanks are not regulated under RCRA, Subtitle I, but may be regulated by State laws and regulations. The appropriate environmental regulatory authority should be consulted with to determine whether corrective action is necessary or if the State has statutory or regulatory exclusions for lenders that extend loans to borrowers who own or operate AST's or heating oil tanks.

Under normal circumstances, FSA will not conduct removal or corrective actions for UST's unless 1 of the following actions occurs:

- FSA actively participated in managing the property before its acquisition
  - the property has been held in inventory for longer than 12 months and no diligent efforts have been made by FSA to dispose of the property
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#### 4 Management and Disposal of Inventory Property (Continued)

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##### B

##### Petroleum Products/UST's (Continued)

**Note:** For States with redemption periods, FSA will not consider the 12-month period to begin until clear title is obtained to the property. Also, FSA will take no corrective/remedial action on property which is under lease with an option to purchase. The 12-month period begins for these leased properties when it becomes available for sale (lease expires or option was not exercised).

- any known leakage presents an immediate concern to the health and safety of neighboring property owners or to the potential purchasers of the property

**Example:** A leaking UST may be contaminating groundwater that is used for human consumption.

- the property is being sold to a beginning farmer or rancher and FSA is providing credit assistance through direct, participation, or guaranteed methods. The sales price of the property will be the “as improved” value determined by an appraisal.

If it is determined that corrective action may be necessary for UST, FSA will take corrective action by contracting with an environmental professional to remove UST and backfill the removal site according to Federal, State, and local laws and regulations. In addition to removing UST, FSA must also ensure that all contaminated soil has been removed and disposed of according to all applicable laws and regulations.

EPA considers UST's to be in use and in operation if petroleum is added to, dispensed from, or stored in UST. Therefore, FSA cannot continue to use, store, dispense, or fill petroleum in UST or UST system after obtaining marketable title and access to UST or UST system without incurring Subtitle I liability. Affirmative actions such as tank emptying, capping and securing lines, permanent or temporary closure, and release reporting are not considered participation in management and will not incur Subtitle I liability. (60 FR 46692, 46669 (September 7, 1995))

Performing due diligence is no guarantee that UST's will be found. The property acquired by FSA may contain UST's which are not detectable, difficult to identify, and not registered with the State. If a tank is not discovered until after the property is sold, FSA may still take appropriate corrective action if necessary according to this notice.

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#### 4 Management and Disposal of Inventory Property (Continued)

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##### B

##### **Petroleum Products/UST's (Continued)**

Property may be acquired by FSA which has or is used for the production of petroleum. The production of petroleum includes, but is not limited to, activities involved in the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials, either domestically or abroad. In most of these cases, FSA will not be liable under Federal law for corrective action concerning the production of petroleum, but may be liable under RCRA for spills, releases, or remedial action resulting from some actions concerning the production activities.

SEC should consult with the Regional Office of the General Counsel and the appropriate environmental regulatory authority to determine whether State laws or regulations require corrective action.

When the property is being sold back to PRP, FSA will not undertake response or corrective actions.

Even though no corrective action may be taken on a property as a condition of disposal, FSA will obtain the proper level of documentation according to subparagraph 3 A of this notice. This documentation will be retained in a permanent file by SEC in the State Office.

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##### C

##### **Solid/Medical Waste**

Nonhazardous solid waste (garbage) and medical waste are not regulated by CERCLA, but may be regulated under the provisions of RCRA as in the case of abandoned batteries or appliances containing substances regulated under RCRA or CERCLA. Unless required by State or local laws or regulations, solid waste may be cleaned up at the discretion of FSA depending on the effect of the waste on the market value of the property and whether it contains no significant amounts of regulated substances.

In the case of medical waste, SEC should consult with the appropriate environmental regulatory authority to determine State or local requirements for response or corrective actions.

When the property is being sold back to the former owner or other person who may be responsible for the dumping of waste, FSA will not undertake any response or corrective action.

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#### 4 Management and Disposal of Inventory Property (Continued)

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##### D

##### Leasing

When leasing property, appropriate restrictions should be placed in the lease agreement to avoid further contamination of the inventory property. Restrictions may include:

- restricting any use of UST
  - restricting the filling of spray equipment within close proximity to wells
  - prohibiting the dumping of hazardous substances on the subject property.
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##### E

##### Reporting to Regulatory Authority

Regardless of whether corrective action is taken, FSA is still responsible, following foreclosure or voluntary conveyance, for reporting to the appropriate environmental regulatory authority any discovery of a release of regulated substances or a suspected release at UST site or in the surrounding area.

Such reporting is considered necessary to ensure protection of human health and the environment.

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##### F

##### Notification and Advertisement

For property that is contaminated as determined according to paragraph 2 of this notice; FSA will provide notice in the advertisement that the property contains hazardous waste contamination or UST's and that a copy of the environmental documentation may be reviewed at the local FSA office.

The advertisement of an inventory property that is subject to a response or corrective action by the Government according to subparagraph 4 A of this notice shall contain the following:

- brief statement acknowledging that the property is contaminated with hazardous substances, hazardous waste, or a leaking UST
- guarantee to the purchaser that the Government will clean up the contamination present on the property at the time of the sale
- description of the contaminated area.

The advertisement of an inventory property that is not subject to a response or corrective action by the Government shall contain the following:

A brief statement acknowledging that the property is contaminated with hazardous substances, hazardous waste, or a leaking UST; but that no corrective action will be taken by FSA. The property will be sold "as is".

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**4 Management and Disposal of Inventory Property (Continued)**

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**F**

**Notification and  
Advertisement  
(Continued)**

FSA will not provide notification or warrants in its deeds conveying the title of inventory property when corrective action is not to be undertaken by FSA. When corrective action will be taken by FSA, the language included in Exhibit 2 should be included as part of the deed.

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**5 Action**

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**A**

**State Office  
Action**

State Offices:

- may implement the requirements of this notice through issuance of State notices or an instruction
  - must obtain approval by CEPD for any revisions or modification to this notice, unless the revision is specifically required by State law, in which case the revision must be approved by the applicable Regional Attorney
  - may direct questions about this notice or assistance about contracting for an environmental professional to James P. Fortner, CEPD, Environmental Activities Branch, at 202-720-1976.
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**Addendum To Transaction Screen Questionnaire**

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## 1. Site Background Information

Site

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code \_\_\_\_\_

County: \_\_\_\_\_

Date FSA became involved with the property (Date of first loan or application): \_\_\_\_/\_\_\_\_/\_\_\_\_

Directions to Property: (From nearest town)

\_\_\_\_\_  
\_\_\_\_\_

Nearest Intersection: \_\_\_\_\_

Property Size: \_\_\_\_\_ Plot Map Available? Yes ☐ No ☐ *If yes, please attach.*Is the property or a portion thereof located in a floodplain? Yes ☐ No ☐ *If yes, please attach  
copy of floodplain.*Is the property or a portion thereof located in a wetland? Yes ☐ No ☐Are there any buildings on the property? Yes ☐ No ☐ *If yes, please complete table below:*

Type of Structure	Year Built	Used for Chemical Storage or Mixing?
	/ /	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	/ /	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	/ /	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	/ /	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	/ /	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
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**Addendum To Transaction Screen Questionnaire (Continued)**

## 1. Site Background Information

(Continuation of TSQ questions 5 and 6).

If the answers to questions 5 and 6 were yes, complete the following table.

Container Location	Container Contents	EPA REG# (If available)	Estimated Quantity	Is the Container leaking?
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
				Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>

(Continuation of TSQ Question 10)

If the answer to question 10 was yes, complete the following table.

Tank Location and Size, if Known	Above-Ground (AST) or Underground (UST)	Is the Tank Registered with State?	Does the Tank Contain any Substance?	Is the Tank Known to be Leaking?
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>
	AST <input type="checkbox"/> UST <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/> UK <input type="checkbox"/>

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**Addendum To Transaction Screen Questionnaire (Continued)****2. Water and Waste Information**

Are there any wells located on the property? Yes ☐ No ☐ *If there are wells located on the property, provide the following information:*

Location of Well	Use	Depth	Condition	Construction

If applicable, is there evidence of well contamination such as signs of using an area immediately adjacent to the well for the filling of spray tanks? Yes ☐ No ☐ *If yes, please describe:*

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If drinking water is not obtained from a groundwater source on the property, where does the supply come from?

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If a residence is located on the property, what type of waste or septic system is used? Describe condition of such system along with distance of system from any drinking water sources.

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Are any lagoons or ponds located on the property used for the storage of animal waste? Yes ☐ No ☐  
If yes, provide a brief description of the lagoons including their present condition and status including any permit numbers.

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Continued on the next page

**Addendum To Transaction Screen Questionnaire (Continued)**

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Are there any ponds, lakes, dams, or other surface water sources located on the property? Yes ☐ No ☐  
*If yes, is there any evidence of contamination? If there is evidence of contamination, provide a brief description, type, and location.*

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**3. Site Ownership History**

Current Owner: \_\_\_\_\_  
Previous Owner: \_\_\_\_\_  
Primary Use(s): \_\_\_\_\_  
Features/Comments: \_\_\_\_\_  
Source of Data: \_\_\_\_\_

**4. Record Review and Personal Knowledge**

To the best of your knowledge, are there circumstances associated with the site or adjacent sites' history that may indicate a potential for hazardous substance contamination? Did your review of the FSA case file for this property indicate potential for hazardous substance contamination? Consider such factors as: (1) was the site used for any industrial, manufacturing, or processing purposes; (2) regulatory history as revealed by citations from local, State or Federal agencies; (3) any reported accidents of chemical spills; and (4) proximity of closest National Priority List Superfund cleanup site.

Yes ☐ No ☐ If yes, please describe:

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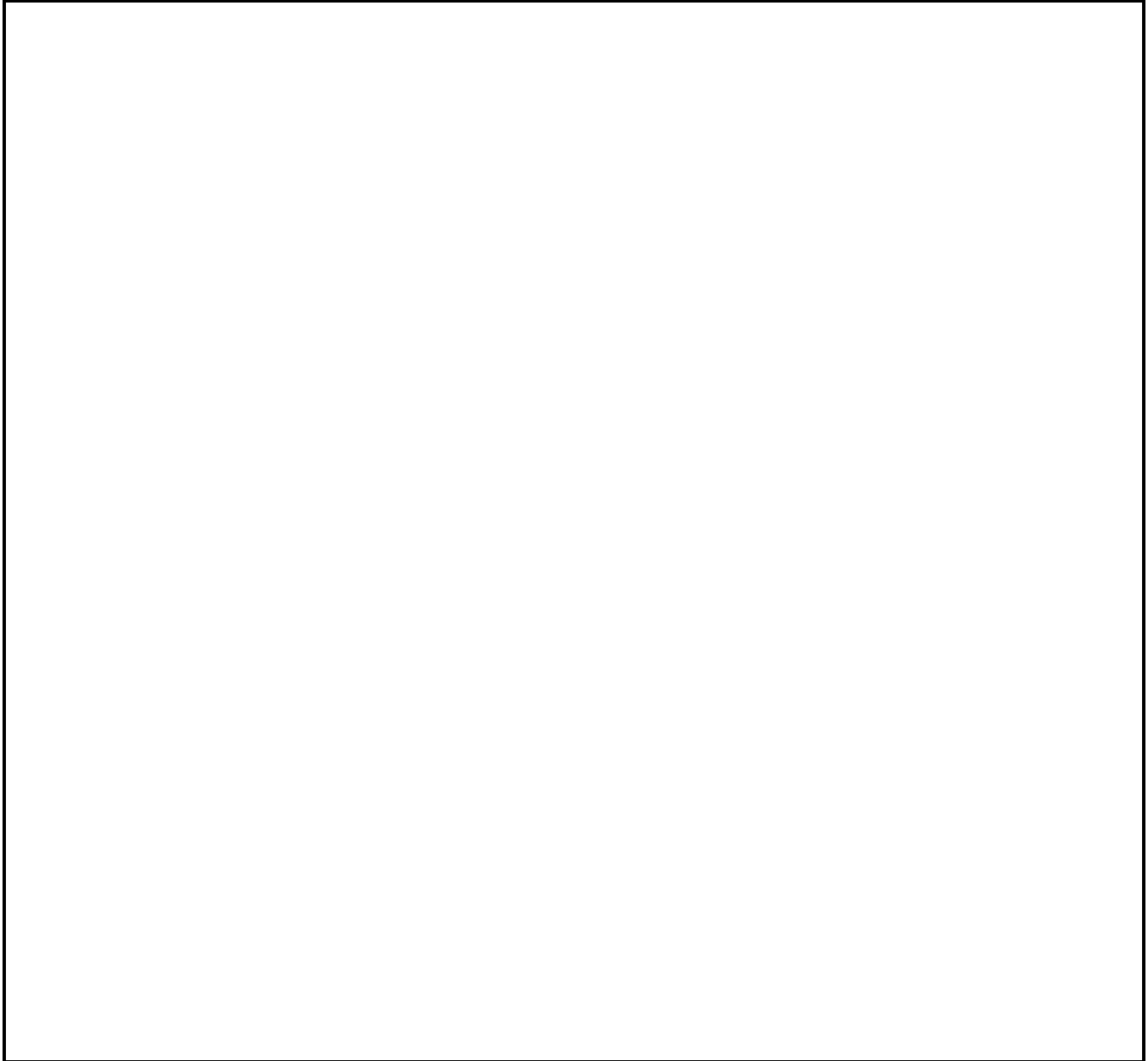
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**Addendum To Transaction Screen Questionnaire (Continued)**

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## 5. Sketch of Property:

**Legend:**

U	UST	++++	Railroad
A	AST	○	Pond or lagoon
△	Residence	●	Dump or other possibly contaminated site
□	Building	◇	Grain bin or silo
■	Septic System	▲	Well-Drinking Water
~~~	Creek, stream, river	◆	Well-Irrigation or other
====	Public road	†	Cemetery
----	Private road or driveway		

**Addendum To Transaction Screen Questionnaire (Continued)**

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## 6. Conclusion

I have reviewed the documents in the case file and have made a site inspection. The result of this site inspection is:

- ☐ Evidence of contamination was found or observed
- ☐ Evidence of contamination was found; further assessment is needed
- ☐ The preliminary environmental assessment results were found to be inconclusive
- ☐ No evidence of contamination was found or observed

To the best of my knowledge, the above statement and facts are true and correct, and to the best of my knowledge, no facts or information have been misrepresented or omitted:

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Signature

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Date

**Deed Language**

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When disposing of inventory properties for which FSA will provide corrective actions, the servicing official shall incorporate the following 2 paragraphs into the main body of the deed:

The GRANTOR agrees to be responsible for responding to hazardous substances (as defined by 42 U.S.C. 9601(14)) located on the property at the time of transfer, whether such hazardous substances have been identified at the time of transfer of title to the Grantee or are identified after transfer of title. Subject to availability of appropriations, the Grantor agrees to respond to hazardous substances on or from the property, not inconsistent with the requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9601 et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300).

The GRANTOR and its employees, agents, contractors, and subcontractors have the right, upon reasonable notice to the Grantee or any assignee, to enter upon the property for response actions.

The servicing official shall incorporate the following notice as an attachment to the deed where hazardous substances are or have been stored for more than 1 year, or released, on the property in excess of the quantities described in 40 CFR 373.2. If FSA records include a site investigation or other environmental report regarding hazardous substances, FSA should provide a copy of the report to the prospective purchaser before the purchaser signs any contract for the sale of the property.

### **Notification Hazardous Substance Activity**

The property described as:

[insert legal description or reference legal description in deed]

is known to have had hazardous substances stored on it for one year or more, or released or disposed of based on a complete search of Agency files. The identity of such hazardous substances and available information is contained in the following table:

The following table documents the hazardous substances detected in a site investigation conducted by [insert name of environmental professional firm that prepared the investigation report along with the title of report and its date]. The TYPE identifies the hazardous substance by product name and chemical name, the REPORTED SITE CONCENTRATIONS indicates the amount in mg/kg or ppm for release solids and liquids, and the AMOUNT OF STORED CONTAMINANT indicates the amount in kilograms for hazardous substances stored on the property in containers.

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Continued on the next page



**Deed Language (Continued)**

<b>Hazardous Substance</b>	<b>Regulatory Synonyms for Hazardous Substance 40 CFR Part 261, If Applicable</b>	<b>Hazardous Waste CASRN Number <u>1</u>/</b>	<b>Reported Site Concentrations <u>2</u>/ (mg/kg or ppm)</b>	<b>Amount of Stored Contaminant <u>3</u>/</b>	<b>Date of Storage, Release, or Disposal If Known</b>

List any other information pertinent to describing the history of hazardous substances located on the property.

The information contained in this notification is required under the authority of regulations promulgated under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9620(h).

SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

1/ CASRN - Chemical Abstracts Service Registry Number. This is a specific number assigned to known hazardous substances and is available from the analytical laboratories or USEPA lists. If known, the number must be on the notification that accompanies this deed, according to 40 CFR 373.3(a).

2/ If hazardous substances have been stored on the property but there were no releases, the completion of this column is not required.

3/ Use this column for reporting amounts of stored hazardous substances which are located on the property.